

No. 21779

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK HALE BENNETT)

Appellant)

vs)

DALLAS ALLEN et al., and the)
PEOPLE OF THE STATE OF CALIFORNIA)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

APPELLANTS' REPLY BRIEF

FILED

AUG 15 1967

WM. B. LUCK, CLERK

Frank Hale Bennett
P.O. Box 107
Tehachapi, California

Attorney for Appellant
In Propria Persona

TOPICAL INDEX

	<u>Page</u>
Reply to Attorney Generals Argument	1-3
Questions Presented for Consideration and Decision	3-6
Conclusions	6-7-
Certification (Original)	8
Proof of Service by Mail (Original)	9

CASES CITED

Page

<u>Beavers</u> v <u>Henkel</u> ; N.Y. 1904, 24 S. Ct. 605, 194, U.S. 83, 48 L Ed. 882	4
<u>Castenada</u> v Supreme Court; (1963) 59 C, 2d., 439 30 Cal. Repts. 1, 380, P. 2d. 641.	5
<u>Escobedo</u> V <u>Illinois</u> ; (1964) 378 U.S., 478-84, S ed., 1758, 12 L ed. 977	6
<u>Haldridge</u> v <u>U.S.C.A.</u> ; D.C. Neb. 282 F, 2d, 302.....	4
<u>Johns</u> v <u>Smyth</u> , D.C. Va. 1959, 176 F Supp 949.....	6
<u>Lewis</u> v <u>Superior Court in and For San Bernardino County</u> ; 69 P 2d. 220	4
<u>People</u> v <u>Fick</u> ; 89, Cal. 144	5
<u>People</u> v <u>Dorado</u> ; 62 Cal. 2d. 338, 354, 398 P 2d. 361, 376-92, Cal. Rept. 169-179.....	6
<u>Phebris</u> v <u>Search</u> ; 264 F, 407. Quoted by Rice J. in <u>U.S. v United States F & G. Co.</u> 24 F Supp 961, 1938	5
<u>State</u> V <u>Rollins</u> ; 8 N.H. 550	5
<u>Wyatt, In Re</u> ; (1931) 114 CA 557, 562.....	4

STATUTES

California Penal Code 777	4
" " 849	5
" " 1462	4
28 U.S.C.A. 2241--2254	7
42 U.S.C.A. 1981 et Seq	3
42 U.S.C.A. 1983, 1985 2,3,	2-3

RULES OF COURT

Federal Rules of Civil Procedure 55	7
" " " " 73 (a).....	2
" " " " 18351.....	4
Fifth, Sixth, and Fourteenth Amendments; United States Constitution	5-6

UNITED STATES COURT OF APPEALS

FRANK HALE BENNETT
Appellant
vs

DALLAS ALLEN et al., and the
PEOPLE OF THE STATE OF CALIFORNIA
Appellees

No. 21779

APPELLANTS REPLY BRIEF ON
APPEAL

Appellant FRANK HALE BENNETT, filed with this Honorable Court his Opening Brief July 26, 1967, and has received Appellees Brief dated August 1, 1967.

I

The Attorney General is in error with reference to the Appeal being dismissed for not timely filing. (Appellants Brief P 6 I)

Appellant calls this Honorable Courts attention to (Tr. of Record, page 100) where a notice of appeal was filed on December 5, 1966 then returned to appeant with a letter from the Clerk of the Court, stating

the appeal was unfiled without any explanation. On December 5, 1966 the Honorable Judge Leon R. Yankwich--"declined to issue Certificate of Probable Cause" (Tr. of Record P. 97). Appellant has complied with 73 (a) Federal Rules of Civil Procedures.

II

The defendant Judges, Prosecutors, Prison Officials, and the People of the State of California are not immune from a Civil Rights Suit. (Appellees Brief P 6).

"When two or more persons conspire to violate Civil Rights of an individual, acting under color of state law. If one or more of the Conspirators is a State Officer, mere fact that certain of other conspirators are not state officers constitute no defence to any of them under the Civil Rights Statute 42 U.S.C.A. Sec. 1981 et Seq. 1983, 1985 2,3."

The defendant Judges, Prosecutors and Prison Officials have operated in excess of thier jurisdiction. They conspired to deprive appellant of his freedom.

"A plaintiff charging violation of his Civil Rights by a conspiracy is not required to list the place and date of defendants meeting and the summary of thier conversations and he is not required to pleade his evicence. (42 U.S.C.A. Sec. 1983, 1985, 2,3,.

The damage in a Civil Conspiracy flows from the overt acts and not from the conspiracy.

Appellant was railroaded into prison by the appellees, and is being kept in prison for as long as they can, as a political favor. (Tr. of Record Pages 7-15)

III

As to defendants, Bland, Adult Authority, Lloyd and People of the State of California (Ref: Appellees Brief P 8) They have conspired and there is a connection.

"Appellant is not required to list the place and date of defendants meeting and the summary of their conversations and he is not required to plead his evidence" 42 U.S.C.A. Sec. 1983, 1985, 2, 3, 4.

IV

Defendants Clark, Hamilton, Bland, and Willis did violate appellants Civil Rights. (Appellees Brief P 9).

"If one of acts of a defendant depriving a plaintiff of Civil Rights, causes damage to plaintiff, and act of particular defendant was done pursuant to the conspiracy, during its course, in furtherance of objects of conspiracy, with requisite purpose and intent and under Color of State Law, then all defendants are liable for acts of particular defendant under general principle of agency on which conspiracy is based." 42 U.S.C.A. Sec. 1981 et Seq. 1983, 1985, 2, 3, 4.

QUESTIONS PRESENTED FOR CONSIDERATION AND DECISION BY THIS HONORABLE COURT

I

The Attorney General and the U.S. District Court for the Central District of California, have completely ignored appellants allegations as set forth in the Original Complaint. (Tr. of Record P 17-19). The Attorney General moved for a dismissal of the action (Tr. of Record P 49).

On a motion to dismiss a complaint, facts alleged therein must be presumed to be true. (Rules Fed. Civ. Procedure 18351) This being so the Attorney General and the U.S. District Court, by thier own admissions have admitted appellants allegations are true.

Why was the Action dismissed by the District Court without a hearing or opinion?

II

Appelles have completely ignored appellants alligations with refrence to Jurisdiction.

The alleged offence was committed in the Corona Municipal Court Jurisdiction. Appellant was arrested without a warrant, and removed some fifteen (15) miles to the Riverside Municipal Court Jurisdiction.

Beavers v Henkel, N.Y. (1904) 24 S. Ct. 605. 194 U.S. 83, 48 L ed 882.

The locality in which the offence is charged to have been committed determines the place and court of trial.

Haldridge v U.S.C.A. Neb. 282 F 2d., 302. Correct venue in criminal case is a matter of Constitutional Right and questions of venue are not merely of formal legal procedure, but raise deep issues of public policy.

Appellant was arraigned before a court whose jurisdiction did not encompass the location of the crime. He should have been arraigned in the Corona Municipal Court. (Calif. P.C. 1462). Must be taken before a Competent Court within area of offence (Calif. P.C. 777). See; In Re Wyatt, (1931) 114 Ca 557, 562. Lewis v Superior Court in and for San Bernardino County, 69 P 2d 220.

The test of jurisdiction is the right to decide, not right decision. Judgments of Courts which at the time the Judgments were rendered had no jurisdiction to consider or to determine the issues in the respective cases, and whose records at such time disclose such lack of jurisdiction are absolutely void and may be attacked and defeated collaterally. Phobres v Search; 264 F. 407, Quoted by Rice J. in U.S. vs United States F & G. Co 24 F Supp 961, 1938.

Why was appellant denied the right of trial in the proper and legal jurisdiction (Corona Municipal Court) ?

III

Deputy Hamilton did not obtain a warrant as is required by Calif. P.C. 849. Castenada v Supreme Court (1963) 59 C 2d. 439, 70 Cal Repts. 1, 380 P. 2d 641.

Appellant has lived in and around the City of Corona California for over 20 years, and is a property owner.

Deputy Hamilton, with the aid of the other conspirators kidnapped, appellant from Corona California--(--The gist of kidnapping is the intentional taking of a person and compelling him to be detained against his will. It is not necessary to show any actual violence (State v Rollins, 8 N.H. 550) or in 5h3 purpose material (People v Fick; 89 Cal. 144) and moved appellant, some fifteen (15) miles distant to Riverside, California.

Deputy Hamilton or Deputy Willis did not at the time of the arrest (kidnap) advise appellant of his Constitutional Rights, and refused to allow appellant to call his attorney (Tr of Record P 16-18).

Sixth Amendment, United States Constitution

Escobedo v Illinois (1964) 378 U.S. 478-84 S ed 1758, 12 L ed 977.

People v Dorado, 62 Cal. 2d 338, 354, 398 P. 2d 361, 276-42 Cal Rept. 169-17

Is appellant entitled to these protections?

IV

If appellant had been represented by a competent counsel, one who did not have adverse feelings toward his client, appellant would have been afforded the protections guaranteed him under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. (Tr. of Record P 17-19) Rather appellants attorney (Robert Garst) joined in the conspiracy with the Prosecutor (Roland Wilson) and Judge Ritch to further his own political ambitions, and double crossed his client.

"An attorney in the representation of his client in a criminal case, in order to fulfill the requirements of the Sixth Amendment should have no conflict of interest, and must devote his full and faithful efforts to the defense of his client" Johns v Smyth, D.C. Va. 1959. 176 F Supp. 949.

Is appellant entitled to the protections of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States?

CONCLUSIONS

All of appellants allegations (Tr. of Record 102) can be proved if the records are brought forth and reviewed by this Honorable Court. (See Motion for Records, dated July 11, 1967, U.S. Court of Appeals, Ninth Circuit, Case No. 21779.

Appellees have not denied or shown these allegations to be untrue, rather the appellees have chose to ignore them.

The Attorney General is in error, or has been misinformed, that appellant has not exhausted his state remedies pursuant to 28 U.S.C.A. Sec 2241 through 2254, (Appellees Brief P 11-12) Appellant has exhausted his state remedies.

The above should have no bearing on this cause of action as it is immaterial. This cause of action is a Civil Rights Suit, and is not a Habeas Corpus action.

Appellees have conspired together and have used thier Offices of Trust for thier own selfish reasons to further thier Political ambitions (Ts of Record P 7-15) with the aid of a disreputable informant and an unethical Attorney, to deprive appellant under "Color of Law" of his liberty and freedom.

A Default Judgment should be awarded appellant against Dallas Allen for failure to answer and defend (Rule 55 Rules Federal Civil Procedure)

For the foregoing reasons appellant, respectfully requests that this Honorable Court. "DECLARE" that appellees have conspired to violate appellants Constitutional and Civil Rights under "Color of Law", and have illegally deprived him of his liberty and freedom. Or in the alternative, allow appellant to appear in a Court of Law with Compentent Counsel and present his evidence so that Justice can be done.

Respectfully Submitted

